

THE HONORABLE KYMBERLY K. EVANSON

UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JAVIER TAPIA,

Plaintiff,

v.

NAPHCARE, INC., et al.

Defendants.

NO. 2:22-cv-01141-KKE

STIPULATED MOTION TO MAINTAIN  
EXHIBIT 30 UNDER SEAL AND  
ORDER TO SEAL

**I. INTRODUCTION**

The above-named Parties, by and through their respective counsel, jointly move this Court for an Order pursuant to Local Civil Rule 5(g) to maintain under seal Exhibit 30 (Dkt. 61-30, 62, 62-1), previously filed with the Declaration of Ryan D. Dreveskracht in Support of Plaintiff's Discovery Motion filed on October 26, 2023, (Dkt. 61).<sup>1</sup> The Parties hereby stipulate and agree as follows:

1. Exhibit 30 is a subject of Plaintiff's Motion to Overrule NaphCare Inc.'s Assertion of Privilege and Compel Deposition Testimony of Dr. Elliot Wade. (Dkt. 59).

<sup>1</sup> Plaintiff also filed Exhibit 14 under seal because it was designated by NaphCare, Inc. Confidential under the parties' protective order (Dkt. 43). Dkt. 61-14, 62. NaphCare, Inc. has agreed to withdraw the Confidentiality designation for Exhibit 14 and the parties agrees that the exhibit may be unsealed.

2. Given the privilege claim dispute, the Parties therefore stipulate to maintaining under seal the above referenced exhibit until the Court has the opportunity to resolve the dispute.

## II. LEGAL STANDARD

3. For non-dispositive motions, the public's right to access to records filed before a court yields if there is a "good cause." *Kamakana v. City & Cnty. of Honolulu*, 447 F.3d 1172, 1180 (9th Cir. 2006).

## III. ARGUMENT

4. Federal Rule of Civil Procedure 26(b)(5)(B) provides that when a party notifies another party of the inadvertent production of information subject to privilege, the receiving party "may promptly present the information to the court under *seal* for a determination of the claim." Fed. R. Civ. P. 26(b)(5)(B) (emphasis added). Courts have found that documents subject to privilege disputes may properly be filed under sealed. *WatchGuard Techs., Inc. v. iValue Infosolutions Pvt. Ltd.*, No. C15-1697-BAT, 2017 WL 3581624, at \*2 (W.D. Wash. Aug. 18, 2017) (collecting cases granting motions to seal documents subject to privilege claims under the higher "compelling reasons" standard); *Diamond X Ranch LLC v. Atl. Richfield Co.*, No. 13-00570, 2016 WL 3176577, at \*4 (D. Nev. June 3, 2016).

5. Here, on September 28, 2023, NaphCare, Inc. notified Plaintiff and Defendant Pierce County that it was clawing back Exhibit 30 pursuant to Federal Rule of Civil Procedure 26(b)(5)(B). Dkt. 61-24. Plaintiff later submitted Exhibit 30 to the Court under seal as an exhibit to a motion to compel. The parties agree that Exhibit 30 is the subject of a privilege dispute and should be maintained under seal. *See* Fed. R. Civ. P. 26(b)(5)(B); *Diamond X Ranch LLC*, 2016 WL 3176577, at \*4.

**IV. Local Civil Rule 5(g) Certification**

6. On November 6, 2023, counsel for NaphCare, Inc., Plaintiff, and Pierce County met and conferred via a telephonic conference. Ryan Dreveskracht appeared for Plaintiff, Kristal Cowger appeared for Pierce County, and Jacob Dean and Juliana Bennington appeared for NaphCare, Inc. The parties agreed it is proper and appropriate that Exhibit 30 be maintain under seal. The parties further agreed to move the Court to maintain the seal via a joint stipulated motion and proposed order.

**V. CONCLUSION**

7. For the reasons above, the Court should grant the parties' joint stipulated motion to maintain under seal Exhibit 30 (Dkt. 61-30, 62-1), which was previously filed with Declaration of Ryan D. Dreveskracht in Support of Plaintiff's Discovery Motion filed on October 26, 2023. (Dkt. 61).

8. By so stipulating, neither Plaintiff nor Defendants consent to discovery above or beyond those permitted by the Federal Rules of Civil Procedure or this Court's Local Civil Rules.

DATED this 7th day of November, 2023.

s/ Ryan D. Dreveskracht

Ryan D. Dreveskracht, WSBA #42593

s/ Corinne Sebren

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**ORDER**

Pursuant to the Stipulation above, the Court hereby ORDERS that Exhibit 30 (Dkt. 61-30, 62-1) filed with the Declaration of Ryan D. Dreveskracht in Support of Plaintiff's Discovery Motions be maintained under seal.

DATED this 8<sup>th</sup> day of November, 2023.



Kymberly K. Evanson  
United States District Judge

Presented By:

s/ Ryan D. Dreveskracht

Ryan D. Dreveskracht, WSBA #42593

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